

**ALERTS**

## Federal Agencies Issue Joint Statement on Approach to Crypto-Asset Regulation for Banking Organizations

**December 1, 2021**

On Nov. 23, 2021, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (collectively, “Agencies”) issued a joint statement detailing their recent “policy sprints” in the crypto-asset space and outlining next steps as they consider providing additional guidance in this area (“Statement”).<sup>[1]</sup>

Stressing the importance of “provid[ing] coordinated and timely clarity where appropriate to promote safety and soundness, consumer protection, and compliance with applicable laws and regulations,” the Agencies detail in the Statement their recently conducted “policy sprints,” in which Agency staff with relevant experience and subject matter expertise conducted preliminary analyses on a range of issues and activities in the crypto-asset space. Defining “crypto-assets” as “any digital asset implemented using cryptographic techniques,”<sup>[2]</sup> the Agencies noted that the policy sprints were focused on three main areas:

- Developing a commonly understood and uniform vocabulary around the use of crypto-assets by banking organizations;
- Identifying and assessing key risks, including those which relate to consumer protection, safety and soundness and compliance, and considering the legality of potential crypto-asset activities conducted by banking organizations; and

- Analyzing the applicability of existing regulations, as well as identifying areas where additional clarity could be beneficial.[3]

Based on these three areas, as well as a closer examination of several crypto-asset-related activities in which banking organizations might engage,[4] the Agencies identified several areas which warrant additional public clarity.[5] Accordingly, the Agencies intend, throughout 2022, to “provide greater clarity on whether certain activities related to crypto-assets conducted by banking organizations are legally permissible, and expectations for safety and soundness, consumer protection and compliance with existing laws and regulations” relating to:

- Crypto-asset safekeeping and traditional custody services;
- Ancillary custody services;
- Facilitation of customer purchases and sales of crypto-assets;
- Loans collateralized by crypto-assets;
- Issuance and distribution of stablecoins; and
- Activities involving the holding of crypto-assets on the balance sheet.[6]

The Agencies also plan to assess the application of bank capital and liquidity standards to crypto-assets for activities involving U.S. banking organizations and to engage with the Basel Committee on Banking Supervision regarding the crypto-asset space.[7]

The Statement is the latest indication of regulators’ eagerness to pave a regulatory path forward in crypto-related spaces and provide legal clarity to industry participants, as well as to bring cryptocurrencies and other crypto-assets under their purview. For example, the Statement follows in the immediate wake of the President’s Working Group on Financial Markets’ interagency report on stablecoins issued earlier this month, which emphasized the necessity of a comprehensive regulatory framework for stablecoins.[8] We will continue to monitor regulatory developments regarding the crypto-asset regulatory ecosystem.

Schulte Roth & Zabel lawyers are available to assist you in addressing any questions you may have regarding these developments. Please contact your attorney at Schulte Roth & Zabel or any of the following:

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[1] See Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps (Nov. 23, 2021), *available* here. The Office of the Comptroller of the Currency also last week issued its own interpretive letter providing additional guidance to national banks and federal savings associations regarding their cryptocurrency activities. For more information on this interpretive letter, please refer to our *Alert* “OCC Outlines System for Banks to Engage in Certain Cryptocurrency Activities Subject to Supervisory Non-Objection” (Dec. 1, 2021), *available* here. For more information on this interpretive letter, please refer to our *Alert* “OCC Outlines System for Banks to Engage in Certain Cryptocurrency Activities Subject to Supervisory Non-Objection” (Dec. 1, 2021), *available* here.

[2] Statement, *supra* note 1, at 1, n.1.

[3] *Id.* at 1.

[4] These activities include: “[c]rypto-asset custody; [f]acilitation of customer purchases and sales of crypto-assets; [l]oans collateralized by crypto-assets[;] [a]ctivities involving payments, including stablecoins[;] [and] [a]ctivities that may result in the holding of crypto-assets on a banking organization’s balance sheet.” *Id.* at 1–2.

[5] *Id.* at 2.

[6] *Id.* at 2.

[7] *Id.*

[8] President's Working Group on Financial Markets, Federal Deposit Insurance Agency & Office of the Comptroller of the Currency, Report on Stablecoins (Nov. 2021), *available* here. For more information about the report, please refer to our prior *Alert*.

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